

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 11

Session of  
1995

INTRODUCED BY STEWART, BRIGHTBILL, PORTERFIELD, SHAFFER,  
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DELP, HART, ULIANA, GERLACH AND BAKER, JANUARY 17, 1995

AS AMENDED ON THIRD CONSIDERATION, FEBRUARY 28, 1995

## AN ACT

1 Limiting environmental liability for economic development  
2 agencies, financiers and fiduciaries.

3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Economic  
7 Development Agency and Lender Environmental Liability Protection  
8 Act.

9 Section 2. Declaration of policy.

10 The General Assembly finds and declares as follows:

11 (1) The Commonwealth has provided grant and loan funds  
12 to a variety of economic development agencies, all for the  
13 purpose of assisting these agencies in their efforts to  
14 promote the general welfare of this Commonwealth by  
15 encouraging economic development and industrial redevelopment

1 throughout this Commonwealth.

2 (2) Economic development agencies acquire title to  
3 industrial property for financing purposes only and lease or  
4 sell the same to industrial occupants who have sole  
5 possession of the facilities for an amount of rent or  
6 installment payments pursuant to an installment sale contract  
7 which is determined solely on a basis of meeting the costs of  
8 the financing and other costs associated with ownership  
9 unrelated to profit.

10 (3) Economic development agencies acquire possession of  
11 these industrial sites from time to time when the industrial  
12 occupant defaults under its obligations to the agencies under  
13 its lease or installment sales agreements.

14 (4) Economic development agencies also acquire  
15 industrial property either for the purpose of financing or  
16 redevelopment but without a motive for profit or to occupy  
17 the property for their own industrial operations.

18 (5) Economic development agencies are reluctant to  
19 acquire title to or other interests in property whether for  
20 financing or redevelopment purposes or to secure repayment of  
21 obligations unless the economic development agencies are  
22 protected from liability for environmental contamination on  
23 those sites they seek to assist to develop.

24 (6) The taking of legal title and any foreclosure or  
25 retaking of possession of property by an industrial  
26 development agency, area loan organization or industrial and  
27 commercial development authority is pursuant to the following  
28 acts:

29 (i) The act of May 17, 1956 (1955 P.L.1609, No.537),

30 known as the Pennsylvania Industrial Development

1 Authority Act, which expressly requires that the  
2 Pennsylvania Industrial Development Authority loan money  
3 to industrial development agencies secured by not less  
4 than a second mortgage lien.

5 (ii) The act of August 23, 1967 (P.L.251, No.102),  
6 known as the Economic Development Financing Law, which  
7 provides for issuance of debt by industrial and  
8 commercial development authorities and authorizes these  
9 authorities to take title to real property as security  
10 for the indebtedness.

11 (iii) The act of July 2, 1984 (P.L.545, No.109),  
12 known as the Capital Loan Fund Act, which requires that  
13 its loans be made to area loan organizations with  
14 adequate collateral.

15 (7) The maximum level of economic development and  
16 business opportunity and employment and the elimination or  
17 prevention of abandoned industrial and commercial property  
18 and Federal Government or military lands which can best be  
19 provided by the promotion, attraction, stimulation,  
20 rehabilitation and revitalization of all types of industry,  
21 commerce, manufacturing and business development within this  
22 Commonwealth.

23 (8) To continue and further the stimulation of business  
24 opportunities and economic development within this  
25 Commonwealth and thereby cause the reuse and rehabilitation  
26 of industrial and commercial property, it is necessary to  
27 ensure various means of financing to promote economic growth  
28 and the availability of fiduciary services to persons within  
29 this Commonwealth.

30 (9) Lenders are reluctant to provide funding for

1 business opportunities and economic development, and  
2 fiduciaries are reluctant to provide services to persons with  
3 environmental problems, because of catastrophic risks of  
4 environmental liability and remediation costs under  
5 environmental laws relating to releases and contamination  
6 which were not caused by lenders and fiduciaries.

7 (10) When borrowers default on loans, lenders are  
8 reluctant to foreclose upon commercial property with  
9 environmental problems because lenders may be forced to  
10 assume costly environmental liabilities; thus, commercial  
11 property is being abandoned in this Commonwealth and new  
12 businesses are unable to obtain financing to purchase such  
13 properties.

14 (11) Family businesses are unable to establish trusts to  
15 convey their business interests to the next generation and  
16 other businesses are unable to receive retirement, investment  
17 and other trust services from fiduciaries, when fiduciaries,  
18 in their personal or individual capacities, may be held  
19 liable for environmental contamination caused by other  
20 persons merely by virtue of owning property in their trustee  
21 capacities and providing fiduciary services.

22 (12) In order to continue to stimulate growth and  
23 continue the use or reuse of industrial and commercial  
24 property, it is necessary to provide protection, to lenders,  
25 fiduciaries and economic development agencies, from  
26 environmental liability and remediation costs under  
27 environmental laws for releases and contamination caused by  
28 others.

29 (13) Environmental liability for lenders, fiduciaries  
30 and economic development agencies shall be limited in scope

as specifically provided in this act, and this act shall be interpreted as broadly as possible in order to preempt any laws, regulations or ordinances imposing environmental liability on such persons in order to promote economic development.

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Board." The Environmental Hearing Board of the Commonwealth.

"Borrower." A person who has received an extension of credit. The term includes, but is not limited to, a debtor, a lessor, a lessee or an obligor.

"Conservancy." A charitable corporation, charitable association or charitable trust registered with the Bureau of Charitable Organizations and exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)) or other Federal or Commonwealth statutes or regulations, the purpose or powers of which include retaining or protecting natural, scenic, agricultural or open-space values of real property; assuring the availability of real property for agricultural, forest, recreational or open-space use; protecting natural resources and wildlife; maintaining or enhancing land, air or water quality; or preserving the historical, architectural, archaeological or cultural aspects of real property.

"Department." The Department of Environmental Resources of the Commonwealth.

"Economic development agencies." The term includes:

1           (1) Any redevelopment authority created under the act of  
2 May 24, 1945 (P.L.991, No.385), known as the Urban  
3 Redevelopment Law.

4           (2) Any industrial development agency as that term is  
5 defined in the act of May 17, 1956 (1955 P.L.1609, No.537),  
6 known as the Pennsylvania Industrial Development Authority  
7 Act.

8           (3) Any industrial and commercial development authority  
9 created under the act of August 23, 1967 (P.L.251, No.102),  
10 known as the Economic Development Financing Law.

11           (4) Any area loan organization as that term is defined  
12 in the act of July 2, 1984 (P.L.545, No.109), known as the  
13 Capital Loan Fund Act.

14           (5) Any other Commonwealth or municipal authority which  
15 acquires title or an interest in property.

16           (6) Municipalities or municipal industrial development  
17 or community development departments organized by ordinance  
18 under a home rule charter which buy and sell land for  
19 community development purposes.

20           (7) Tourist promotion agencies or their local community-  
21 based nonprofit sponsor which engage in the acquisition of  
22 former industrial sites as part of an "Industrial Heritage"  
23 or similar program.

24           (8) Conservancies engaged in the renewal or reclamation  
25 of an industrial site.

26 "Environmental acts." Collectively and separately, the act  
27 of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams  
28 Law, the act of January 8, 1960 (1959 P.L.2119, No.787), known  
29 as the Air Pollution Control Act, the act of July 7, 1980  
30 (P.L.380, No.97), known as the Solid Waste Management Act, the

1 act of October 5, 1984 (P.L.734, No.159), known as the Worker  
2 and Community Right-to-Know Act, the act of July 13, 1988  
3 (P.L.525, No.93), referred to as the Infectious and  
4 Chemotherapeutic Waste Law, the act of October 18, 1988  
5 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act, the  
6 act of July 6, 1989 (P.L.169, No.32), known as the Storage Tank  
7 and Spill Prevention Act, the act of December 7, 1990 (P.L.639,  
8 No.165), known as the Hazardous Material Emergency Planning and  
9 Response Act, and the act of June 11, 1992 (P.L.303, No.52),  
10 known as the Oil Spill Responder Liability Act, and all such  
11 acts as they may be amended from time to time, and any Federal,  
12 State or local law, statute, regulation, rule, ordinance, court  
13 or administrative order or decree, interpretation or guidance,  
14 now or hereafter in existence pertaining to employees,  
15 occupational health and safety, public health or safety, natural  
16 resources or the environment.

17 "Environmental due diligence." Investigative techniques,  
18 including, but not limited to, visual property inspections,  
19 electronic environmental data base searches, review of ownership  
20 and use history of the property, environmental questionnaires,  
21 transaction screens, environmental assessments or audits.

22 "Fiduciary." Any person which is considered a fiduciary  
23 under section 3(21) of the Employee Retirement Income Security  
24 Act of 1974 (Public Law 93-406, 88 Stat. 829) or who acts as  
25 trustee, executor, administrator, custodian, guardian of  
26 estates, conservator, committee of estates of persons who are  
27 disabled, personal representative, receiver, agent, nominee,  
28 registrar of stocks and bonds, assignee or in any other capacity  
29 for the benefit of another person.

30 "Foreclosure." The date upon which title vests in property

1 through realizing upon a security interest, including, but not  
2 limited to, any ownership of property recognized under  
3 applicable law as vesting the holder of the security interest  
4 with some indicia of title, legal or equitable title obtained at  
5 or in lieu of foreclosure, sheriff sales, bankruptcy  
6 distributions and their equivalents.

7 "Fund." Collectively and separately, any special fund of  
8 Commonwealth moneys administered by the Commonwealth or the  
9 Department of Environmental Resources, including, but not  
10 limited to, the Hazardous Sites Cleanup Fund and the Underground  
11 Storage Tank Indemnification Fund, as well as any other fund of  
12 Commonwealth moneys now or hereafter in existence created for  
13 the funding or reimbursement of costs and damages such as  
14 response costs, emergency response measures and their equivalent  
15 relating to natural resources or the environment.

16 "Guarantor." The term includes guarantors and sureties of  
17 security interests, securities and other obligations, issuers of  
18 letters of credit and other credit enhancements, title insurers  
19 and entities which directly or indirectly acquire indicia of  
20 ownership in the course of protecting a security interest or  
21 acting as such guarantors, sureties, issuers of letters of  
22 credit or other credit enhancements or title insurers. The term  
23 includes guaranties, surety bonds, title insurance policies,  
24 letters of credit and other credit enhancements, and other  
25 agreements with a guarantor relating to the obligations  
26 described in this definition. The term directly or indirectly  
27 includes any interest in property, security interest, indicia of  
28 ownership title or right to title held or acquired by a  
29 fiduciary or similar entity for the benefit of a holder of a  
30 security interest.

1 "Indicia of ownership." Any legal or equitable interest in  
2 property acquired directly or indirectly:

3 (1) for securing payment of a loan or indebtedness, a  
4 right of reimbursement or subrogation under a guaranty or the  
5 performance of another obligation;

6 (2) evidencing ownership under a lease financing  
7 transaction where the lessor does not initially select or  
8 ordinarily control the daily operation or maintenance of the  
9 property; or

10 (3) in the course of creating, protecting or enforcing a  
11 security interest or right of reimbursement of subrogation  
12 under a guaranty.

13 The term includes evidence of interest in mortgages, deeds of  
14 trust, liens, surety bonds, guaranties, lease financing  
15 transactions where the lessor does not initially select or  
16 ordinarily control the daily operation or maintenance of the  
17 property, other forms of encumbrances against property  
18 recognized under applicable law as vesting the holder of the  
19 security interest with some indicia of title.

20 ~~"Industrial activity." Commercial, manufacturing, mining or~~ <—  
21 ~~any other activity done to further either the development,~~  
22 ~~manufacturing or distribution of goods and services, including,~~  
23 ~~but not limited to, research and development, warehousing,~~  
24 ~~shipping, transport, remanufacturing, repair and maintenance of~~  
25 ~~commercial machinery and equipment.~~

26 "INDUSTRIAL ACTIVITY." COMMERCIAL, MANUFACTURING, PUBLIC <—  
27 UTILITY, MINING OR ANY OTHER ACTIVITY DONE TO FURTHER EITHER THE  
28 DEVELOPMENT, MANUFACTURING OR DISTRIBUTION OF GOODS AND  
29 SERVICES, INTERMEDIATE AND FINAL PRODUCTS AND SOLID WASTE  
30 CREATED DURING SUCH ACTIVITIES, INCLUDING, BUT NOT LIMITED TO,

1 ADMINISTRATION OF BUSINESS ACTIVITIES, RESEARCH AND DEVELOPMENT,  
2 WAREHOUSING, SHIPPING, TRANSPORT, REMANUFACTURING, STOCKPILING  
3 OF RAW MATERIALS, STORAGE, REPAIR AND MAINTENANCE OF COMMERCIAL  
4 MACHINERY AND EQUIPMENT AND SOLID WASTE MANAGEMENT.

5 "Industrial site." A site which now has or once had an  
6 industrial activity on it.

7 "Lender." Any person regulated or supervised by any Federal  
8 or State regulatory agency and any of its affiliates or  
9 subsidiaries, successors or assigns, including its officers,  
10 directors, employees, representatives or agents, and any Federal  
11 or State banking or lending agency or its successors, including,  
12 but not limited to, Resolution Trust Corporation, Federal  
13 Deposit Insurance Corporation, Federal Reserve Bank, Board of  
14 Governors of the Federal Reserve System, Federal Home Loan Bank,  
15 National Credit Union Administrator Board, Office of the  
16 Comptroller of the Currency, Office of Thrift Supervision, Farm  
17 Credit Administration and Small Business Administration or  
18 similarly chartered Federal instrumentality. The term also  
19 includes the initial lender and any subsequent holder of a  
20 security interest or note, guarantor, lease financier or any  
21 successor or a receiver or other person who acts on behalf or  
22 for the benefit of a holder of a security interest. The term  
23 includes an economic development agency.

24 "Occupant." A party which occupies or has the right to  
25 occupy property owned by an economic development agency by any  
26 instrument, including, but not limited to, a lease, mortgage,  
27 installment sale contract, disposition agreement or trust  
28 agreement.

29 "Person." An individual, partnership, corporation, business  
30 trust, joint-stock fund, estate trust, banking association,

1 governmental, administrative or regulatory agency, institution  
2 or any other type of legal entity whatsoever.

3 "Property." All types of real and personal and tangible and  
4 intangible property.

5 "Redevelopment." Undertakings and activities made under the  
6 act of May 24, 1945 (P.L.991, No.385), known as the Urban  
7 Redevelopment Law, including, but not limited to, planning,  
8 acquisition, site preparation, demolition, rehabilitation,  
9 renovation, conservation, reuse, renewal, improvement,  
10 clearance, sale and lease of real property and improvements  
11 thereon.

12 "Regulated substance." Any element, compound or material  
13 which is subject to regulation under the environmental acts or  
14 any element, compound or material defined as a hazardous, toxic,  
15 regulated infectious chemotherapeutic substance or chemical  
16 contaminant, waste, any type of pollution or condition or any  
17 equivalent under the environmental acts.

18 "Release." Any spill, rupture, emission, discharge, other  
19 action, occurrence, condition or any other term defined as a  
20 "release" or other threat of release or operative word or event  
21 which would trigger compliance requirements or liability under  
22 the environmental acts.

23 "Response action." An action, including, but not limited to,  
24 a response or interim response, remedial response or remedy or  
25 corrective action, closure, or any other action under the  
26 environmental acts in response to a release, such as testing,  
27 inspections, sampling, installations, corrective action,  
28 removals, closure, response costs, assessments or any types of  
29 claims, damages, actions, fines and penalties.

30 "Security interest." An interest in property created or

1 established for the purpose of securing a loan, right of  
2 reimbursement or subrogation under a guaranty or other  
3 obligation or constituting a lease financing transaction. The  
4 term includes security interests created under 13 Pa.C.S.  
5 (relating to commercial code), mortgages, deeds of trust, liens,  
6 lease financing transactions in which the lessor does not  
7 initially select or ordinarily control the daily operation or  
8 maintenance of the property, trust receipt transactions and  
9 their equivalents. Security interest may also arise from  
10 transactions such as sales and leasebacks, conditional sales,  
11 installment sales, certain assignments, factoring agreements,  
12 accounts receivable, financing arrangements and consignments, if  
13 the transaction creates or establishes an interest in property  
14 for the purpose of securing a loan, right of reimbursement or  
15 subrogation under a guaranty or other obligation. The term also  
16 includes a confession of judgment or money judgment whereby a  
17 lender commences an execution on such judgments with a writ of  
18 execution and thereby causes property to be levied and attached.

19 Section 4. Limitation of economic development agency  
20 environmental liability.

21 An economic development agency that holds an indicia of  
22 ownership in property as a security interest for the purpose of  
23 developing or redeveloping the property or to finance an  
24 economic development or redevelopment activity shall not be  
25 liable under the environmental acts to the department or to any  
26 other person in accordance with the following:

27 (1) An economic development agency shall not be liable  
28 in an action by the department, as a responsible person,  
29 owner, operator or occupier, for remediating a release if the  
30 economic development agency demonstrates any of the

1 following:

2 (i) The economic development agency exercised  
3 reasonable maintenance of the property when it had  
4 possession of the property.

5 (ii) The economic development agency, including its  
6 employees and agents, did not cause or exacerbate a  
7 release of regulated substances on or from the property.

8 (iii) The property is an industrial site.

9 (2) An economic development agency which forecloses on  
10 or assumes possession of a property shall remain within the  
11 exemption from liability under this section.

12 (3) An economic development agency that conducts a  
13 remedial action in accordance with a written agreement with  
14 the department shall not be liable, as a responsible party,  
15 owner, operator or occupier, in any action by the department  
16 for a release or potential release of any regulated  
17 substance.

18 (4) There is cooperation with governmental agencies  
19 performing a remedial action, as follows:

20 (i) An economic development agency and any of its  
21 successors and assigns may take no action that would  
22 disturb or be inconsistent with remedial response that is  
23 proposed, approved or implemented by the Federal  
24 Environmental Protection Agency.

25 (ii) An economic development agency and any of its  
26 successors and assigns shall permit access to Federal and  
27 Commonwealth agencies and other parties acting under the  
28 direction of these agencies to evaluate, perform or  
29 maintain a remedial action.

30 (iii) An economic development agency or any of its

1 successors and assigns shall perform, operate and  
2 maintain remedial actions pursuant to State laws as  
3 directed by the department.

4 Section 5. Limitation of lender environmental liability.

5 (a) Scope of lender liability.--A lender who engages in  
6 activities involved in the routine practices of commercial  
7 lending, including, but not limited to, the providing of  
8 financial services, holding of security interests, workout  
9 practices, foreclosure or the recovery of funds from the sale of  
10 property shall not be liable under the environmental acts or  
11 common law equivalents to the Department of Environmental  
12 Resources or to any other person by virtue of the fact that the  
13 lender engages in such commercial lending practice unless:

14 (1) the lender, its employees or agents directly cause  
15 an immediate release or directly exacerbate a release of  
16 regulated substances on or from the property; or

17 (2) the lender, its employees or agents knowingly and  
18 willfully compelled the borrower to:

19 (i) do an action which caused an immediate release  
20 of regulated substances; or

21 (ii) violate an environmental act.

22 (b) Limitation of lender liability.--Liability pursuant to  
23 this act shall be limited to the cost for a response action  
24 which may be directly attributable to the lender's activities as  
25 specified in subsection (a). Liability shall arise only if the  
26 lender's actions were the proximate and efficient cause of the  
27 release or violation. Ownership or control of the property after  
28 foreclosure shall not by itself trigger liability. No lender  
29 shall be liable for any response action, if such response action  
30 arises solely from a release of regulated substances which

1 occurred prior to or commences before and continues after  
2 foreclosure, provided, however, that the lender shall be  
3 responsible for that portion of the response action which is  
4 directly attributed to the lender's exacerbation of a release. A  
5 release of regulated substances discovered in the course of  
6 conducting environmental due diligence shall be presumed to be a  
7 prior or continuing release on the property.

8 Section 6. Limitation of fiduciary environmental liability.

9 (a) Scope of fiduciary liability.--Any person who acts or  
10 has acted as a fiduciary to another person shall not be liable  
11 in its personal or individual capacity under the environmental  
12 acts or common law equivalents to the department or to any other  
13 person by virtue of the fact that the fiduciary provides or  
14 provided such services unless:

15 (1) during the time when the fiduciary services were  
16 actively provided, an event occurred which constituted a  
17 release of regulated substances according to the  
18 environmental acts at the time of such event;

19 (2) the fiduciary had the express power and authority to  
20 control property which was the cause of or the site of such  
21 release as part of actively providing services; and

22 (3) the release was caused by an act or omission which  
23 constituted gross negligence or willful misconduct of the  
24 fiduciary according to the law or standard practices at the  
25 time of the release.

26 (b) Limitation of fiduciary liability.--Liability under this  
27 act shall be limited to only the cost for a response action  
28 which is directly attributable to the fiduciary's activities as  
29 specified in this section. Under subsection (a)(2), control of  
30 property shall be deemed to be in the lessee and not the lessor

1 for leased property. No fiduciary shall be liable for any  
2 response action, if such response action arises from a release  
3 of regulated substances which occurred prior to, or commences  
4 before and continues after the fiduciary takes action as  
5 specified in subsection (a). Notwithstanding the foregoing, a  
6 fiduciary shall be responsible for that portion of a response  
7 action which is directly attributable to exacerbating a release.  
8 A release of regulated substances discovered in the course of  
9 conducting an environmental due diligence shall be presumed to  
10 be a prior and continuing release on the property.

11 (c) Estate claims.--Nothing in this section shall prevent  
12 claims against the fiduciary in its representative capacity.

13 Section 7. Defenses to liability.

14 A lender, fiduciary or economic development agency can avoid  
15 liability under the environmental acts or the common-law  
16 equivalents by showing evidence that a release or threatened  
17 release of regulated substances for which the lender or  
18 fiduciary otherwise is responsible under sections 4, 5 and 6 was  
19 caused by any of the following:

20 (1) An act of God.

21 (2) An intervening act of a public agency.

22 (3) Migration from property owned by a third party.

23 (4) Actions taken or omitted in the course of rendering  
24 care, assistance or advice in accordance with the  
25 environmental acts or at the direction of the department.

26 (5) An act of a third party who was not an agent or  
27 employee of the lender, fiduciary or economic development  
28 agency.

29 (6) If the alleged liability for a lender or economic  
30 development agency arises after foreclosure, and the lender

1 or economic development agency exercised due care with  
2 respect to the lender's or economic development agency's  
3 knowledge about the regulated substances, and took reasonable  
4 precautions based upon such knowledge against foreseeable  
5 actions of third parties and the consequences arising  
6 therefrom. A lender, fiduciary or economic development agency  
7 can avoid liability by proving any other defense which may be  
8 available to it under the environmental acts or common law.

9 Section 8. Savings clause.

10 Nothing in this act shall affect the rights, immunities or  
11 other defenses that are available under other applicable law to  
12 a lender, fiduciary or economic development agency, including,  
13 but not limited to, rights of contribution and indemnity.

14 Nothing in this act shall be construed to create any new,  
15 different or additional liability for or create a private right  
16 of action against any lender, fiduciary or economic development  
17 agency.

18 Section 9. Apportionment of liability.

19 Notwithstanding anything to the contrary, if two or more  
20 persons acting independently cause distinct harm or a single  
21 harm for which there is a reasonable basis for division  
22 according to the contribution of each, a lender, fiduciary or  
23 economic development agency shall be subject to liability only  
24 for the portion of the total liability that is directly  
25 attributable to the lender ~~or fiduciary~~, FIDUCIARY OR ECONOMIC  
26 DEVELOPMENT AGENCY. <—

27 Section 10. Construction of act.

28 The terms and conditions of this act are to be liberally  
29 construed so as to best achieve and effectuate the goals and  
30 purposes of this act. Liability shall be based on proximate and

1 efficient causation. This act preempts and eliminates all  
2 present liability standards, including, but not limited to, the  
3 concept of a person who, without participation in the management  
4 of property, holds indicia of ownership primarily to protect a  
5 security interest. Under all provisions herein, the burden of  
6 proof shall be upon the person seeking to have a lender,  
7 fiduciary or economic development agency held liable for a  
8 response action OR DAMAGES. ~~The burden of proof shall be upon~~ <—  
9 ~~the person seeking to have a lender or a fiduciary held liable~~  
10 ~~for a response action or damages.~~

11 Section 11. Severability.

12 The provisions of this act are severable. If any provision of  
13 this act or its application to any person or circumstance is  
14 held invalid, the invalidity shall not affect other provisions  
15 or applications of this act which can be given effect without  
16 the invalid provision or application.

17 Section 12. Repeals.

18 To the extent that any environmental acts are inconsistent  
19 with this act, or pose liability as addressed in this act, such  
20 provision of those laws are preempted and deemed repealed so  
21 that the provisions of this act may be enforced. No  
22 environmental law enacted after this act shall be applied  
23 retroactively to impose liability upon lenders, fiduciaries or  
24 economic development agencies, unless there are express  
25 repealers which explain the extent of the repeal.

26 Section 13. Applicability.

27 The provisions of this act shall apply to the following:

- 28 (1) All indicia of ownership, including those presently  
29 or subsequently acquired, or those acquired prior to the date  
30 of enactment that are held primarily to protect a security

1 interest in the property.

2 (2) Each fiduciary with respect to any services provided  
3 by the fiduciary, including those presently or subsequently  
4 provided, and those rendered prior to the date of enactment.

5 (3) All administrative actions, actions, suits or claims  
6 against lenders, fiduciaries or economic development agencies  
7 not yet finally resolved by the department or any court or  
8 administrative hearing board having any action, suit or claim  
9 pending before it or an appeal from a lower court, regardless  
10 of when the release or interest in the subject property  
11 occurred.

12 Section 14. Effective date.

13 This act shall take effect immediately upon the effective  
14 date of the act of , 1995 (P.L. , No. ), known  
15 as the Land Recycling and Environmental Remediation Standards  
16 Act.